

- 16.6 The prayer made by DIL to direct MSPGCL to make payment for period of 1 November, 2019 to 31 May, 2021 for amount of the differential arising from revision of price of coal on account of mine specific charges is fundamentally misconceived, and untenable. MSPGCL has neither paid and/or willing to pay the amount to Westcoast Coal Limited for a period prior to January 2021 which is evident from their own pleadings filed in Case No. 128 of 2021. Hence, the claim amount of Applicant prior to January 2021 cannot be considered, particularly since MSPGCL cannot be compelled to do so beyond their volition either under contract and/or applicable law.
- 16.7 If at this stage, the claim in respect of Change in Law due to variation in coal pricing arising from introduction of add on pricing on Mine Specific Coal supplied by Western Coalfields Limited for a period prior to January 2021 gets approved, it will create an unnecessary and unwarranted burden upon the MSEDCL in consequence of which the burden of payment will reach out to end consumers of the electricity.
- 17. MSPGCL's additional submission (in Case No. 128 of 2021) dated 5 May, 2022:**
- 17.1 This additional submission is being made for claiming Change in Law amount for the period from 2 November, 2019 to 31 December, 2020 on account of mine specific add-on-price for coal tolling arrangement under Case IV Phase-II which was not included while filing the Petition in Case No. 128 of 2021.
- 17.2 MSPGCL had agreed to release payment on account of MSP coal w.e.f. 1 January, 2021 as claimed in Case No. 128 of 2021, whereas it was decided that the outstanding dues on account of MSP for the period 2 November, 2019 to 31 December, 2020 had to be adjusted against the MSPGCL's pending claims towards credit note sought as per FSA viz. short delivery, grade slippage, surface moisture, stone claims etc. from WCL.
- 17.3 On this backdrop while submitting the Petition in Case No. 128 of 2021, MSPGCL has submitted the claim for the mine specific add on cost for the period 1 January, 2021 onwards only.
- 17.4 However, it is now observed that the adjustment with WCL against the various claims of MSPGCL may take considerable time, whereas on going Case IV with DIL is ended on 31 March, 2022. Therefore, MSPGCL has decided to make payment to DIL for the period 2 November, 2019 to 31 December, 2020 instead of waiting for the adjustment with WCL against MSPGCL's pending claims.
- 17.5 The present additional submission is being filed seeking additional amount of Rs. 15.19 Crores towards mine specific additional price as change in law event for Case- IV Phase II with DIL.
- 17.6 Based on the quantum of mine specific coal and considering the additional impact of Rs. 559.82/ MT for mine specific coal, the impact of Change in law claims on account of increase in mine specific coal price is Rs. 15.19 Crores equivalent to around 9 paise per

unit, which is required to be claimed as an additional cost under FAC mechanism as under:

Month	Quantity of Coal dispatched to DIL (MT)	Impact due to Mine Specific (Rs. MT)	Impact of Change in Law (Rs. Crores)	Net sent out generation considered for billing (MUs)	Impact of MSP on Tariff (Rs./ kWh)
	Mine Specific Coal (A)	w.e.f. 02.11.2019 (B)	MSP Impact w.e.f. 2.11.2019 $C=A*B/10^7$	D	$E= C/D *10$
Nov 2019	23531	559.82	1.32	112.42	0.12
Dec 2019	9401	559.82	0.53	111.05	0.05
Jan 2020	8550	559.82	0.48	118.28	0.04
Feb 2020	24213	559.82	1.36	125.00	0.11
Mar 2020	24816	559.82	1.39	125.91	0.11
Apr 2020	29362	559.82	1.64	128.17	0.13
May 2020	9850	559.82	0.55	134.46	0.04
Jun 2020	10452	559.82	0.59	122.00	0.05
Jul 2020	8997	559.82	0.50	118.85	0.04
Aug 2020	4947	559.82	0.28	119.21	0.02
Sept 2020	23200	559.82	1.30	112.84	0.12
Oct 2020	38334	559.82	2.15	113.92	0.19
Nov 2020	25691	559.82	1.44	116.46	0.12
Dec 2020	29987	559.82	1.68	124.79	0.13
Total	271331		15.19	1683.36	0.09

- 17.7 The Phase II period is from 1 November 2019 to 31 March, 2022, hence final settlement has not yet been done. Post final reconciliation, if extra coal remains after the contract period, DIL will supply equivalent energy to MSEDCL at the same terms and conditions within 25% of the contracted period. If excess coal is utilized by DIL and supplied energy to MSEDCL, in such case a payment of energy is made to DIL and there will be no additional cost to the MSPGCL/ MSEDCL on account of the excess coal utilized by DIL.
- 17.8 The change or variation in coal and quality is factored in the mechanism of reconciliation of coal and hence there will be no impact of variation of coal quantity and quality.
- 17.9 With respect to the impact on MoD it is submitted that:
- MSPGCL sought details of the Units under zero schedule from SLDC from November, 2019 to May, 2021. The details were provided by SLDC vide email dated 22 April, 2022.
 - The Plant under zero schedule implies that all other Plants with variable cost lower than such plants are scheduled for supplying the Power by SLDC.
 - When the Plants which were under zero schedule were compared with the DIL during the period, it is observed that power from DIL under case -IV might have been

scheduled, even after considering the Change in Law impact of MSP coal and hence may not have been any deviation in the MoD.

d) The details for November, 2019 to December, 2020 has been provided in the tabular form.

17.10 Therefore, power from DIL under case IV might have been scheduled even after the impact of mine specific coal cost.

17.11 In view of the above, the total claim for the period November, 2019 to May, 2021 is Rs. 23.95 Crores. (Rs. 8.76 Crores as claimed earlier and Rs. 15.19 Crores towards MSP for the period 2 November, 2019 to 31 December, 2020.)

18. At the second hearing held on 6 May, 2022 the Commission heard the parties.

18.1 The advocate Shri G Saikumar appeared for MSEDCL and stated that it has received the additional submission of MSPGCL in Case No. 128 of 2021 and Case No. 48 of 2022 only last evening. Therefore, MSEDCL may be granted one week to make its submission.

18.2 Advocate Ms. Deepa Chawan appeared on behalf of Dhariwal Infrastructure Limited and stated that it has received the additional submission of MSPGCL dated 5 May, 2022 in Case No. 128 of 2021 and 48 of 2012 and stated that since the issues are same both the cases may be heard together. DIL may be granted one week to make its submission.

18.3 Representative of MSPGCL sought one week time for filing its rejoinder submission after MSEDCL & DIL make their submissions.

18.4 Considering request made by parties, the Commission allowed the time sought by the parties.

19. DIL's Rejoinder submission (In Case No. 48 of 2022) dated 17 May, 2022:

On MSEDCL's submission:

19.1 The submission of MSEDCL on maintainability is devoid of merit. The Petition was filed on the basis of scrutiny of the Registry in miscellaneous application of the DIL.

19.2 The detailed Reply submitted by DIL in Case No. 128 of 2021 includes detailed factual matrix.

19.3 MSPGCL in its additional submission dated 5 May, 2022 has acknowledged the payment towards supply of mine specific coal. MSPGCL has duly accepted the MSP coal charges levied by WCL for the entire contract period starting from 1 November, 2019 up to 31 March, 2022.

19.4 Regarding the STC, MSPGCL has used same rate for computation instead of the different slabs applicable. Actually, the coal has been supplied by WCL from the pit-head varied and therefore, STC has been levied by WCL at different rates depending upon the applicable distance slab.

On MSPGCL's submission:

19.5 The argument of MSPGCL that 'the Petition in Case No. 48 of 2022 is infructuous is misconceived. While the primary issues in both the Petitions are similar, DIL has in the Case No. 48 of 2022 has raised certain specific issues between the parties under the DPA dated 18 October, 2019.

19.6 The total claim for mine specific coal and surface transportation charges for the period 2 November, 2019 to 31 March, 2022 is Rs. 25.74 Crores.

19.7 DIL in its Petition has prayed to not only consider the claim limited to the period from 2 November, 2019 to 31 May, 2021 but also decide on the reconciliation and payment modalities arising due to increase in price on coal in terms of the provisions of the DPA for the balance period of the contract up to 31 March, 2022.

19.8 Total receivable from MSPGCL is Rs 68.32 Crores for entire contract period excluding carrying cost.

19.9 MSPGCL has failed to address the issue of short supply of coal under the Case IV which has affected DIL for the period 2 November, 2019 to 31 March, 2022.

19.10 The financial strain on DIL due to increase in price of coal is solely on account of MSPGCL who has failed to bear the additional cost for the procurement of coal at the prevalent prices. The receivables of DIL are analogous to the amount withheld by MSPGCL under the DPA. Therefore, DIL is eligible to claim interest / Carrying cost at the rate of 1.25% per month in terms of Clause 10.4.2 read with Clause 10.5.2 of the DPA dated 18 October, 2019.

19.11 DIL has computed the carrying cost at the rate of 1.25 % per month for the claims from November, 2019 to March, 2022 amounting to Rs. 9.02 Crores.

19.12 The total claim of DIL including carrying cost is Rs. 77.34 Crores as under:

Sr. No	Particulars	Claim amount in Rs. Crores
1	Impact on account of increase in add-on pricing to supply of Mine Specific Coal	64.17
2	Impact on account of increase in STC	3.47
3	Impact on account of increase in evacuation facility charge	0.68
4	Claim of DIL on account of increase in price of Coal (excluding the carrying cost)	68.32

5	Applicable Carrying cost on the above amount up to 30 April, 2022	9.02
6	Claim of DIL on account of increase in price of Coal (including Carrying cost up to 30 April, 2022)	77.34

20. DIL's additional submission dated 17 May, 2022:

20.1 Financial impact on account of variation in Coal price needs to be considered. The claim towards add-on pricing for supply of mine specific coal is worked out to be Rs. 23.80 Crores instead of Rs. 21.62 Crores as claimed by MSPGCL in its additional submission dated 5 May, 2022.

20.2 Increase in STC from December, 2021 has not been considered by MSPGCL in its Petition.

20.3 The total claim considering the impact of introduction of add- on pricing due t supply of MSP coal and the increase in the STC works out to be Rs. 25.74 Crores for the period 2 November, 2019 to 31 May, 2021.

20.4 Further the DIL's claim for the period 1 June, 2021 to 31 March, 2022 is worked out to Rs. 42.58 Crores as under:

Sr. No	Particulars	Claim amount in Rs. Crores
1	Impact on account of increase in add on pricing due to supply of MSP coal	40.37
2	Impact on account of increase in STC	1.53
3	Impact on account of increase in evacuation facility charges	0.68
4	Claim of DIL (Excluding the carrying cost)	42.58

20.5 The total receivables of DIL from MSPGCL for the entire period from 2 November, 2019 to 31 March, 2022 workout to Rs. 68.32 Crores excluding the carrying cost.

20.6 Though the MSPGCL has expanded the scope of the Petition till 31 March, 2022, following Change in Law events have not been mentioned by MSPGCL for which DIL had to bear the impact of revision of coal prices:

- a) Revision in Evacuation Facility Charges by WCL w.e.f. 1 August, 2021.
- b) Further revision of STC w.e.f. 25 December, 2021.

20.7 DIL further reiterated submission regarding the carrying cost at the rate of 1.25 % per month as per the Late Payment Surcharge Clause of the DPA.

20.8 The total claim of DIL including carrying cost is Rs. 77.34 Crores.

21. MSEDCL's additional submission dated 20 May, 2022:

- 21.1 MSPGCL should clarify whether it has claimed any amount from WCL against the adjustment claims of coal supplied to DIL.
- 21.2 The submission of MSPGCL regarding MoD is not fully correct. There is considerable financial impact on MSEDCL due to not adding the CIL amount for MoD purpose.
- 21.3 It is evident from data that DIL was scheduled on some occasions when the rate of other lower rate Units were under reserve/ zero shut down. Tentative impact is 87.84 Lakhs for period of November, 2019 to May, 2021.
- 21.4 The Phase II contract is closed on 31 March, 2022 and almost two months have been passed hence MSPGCL shall submit actual details for CIL.

22. MSPGCL's Rejoinder submission dated 8 June, 2022:

Rejoinder to DIL's submission:

- 22.1 There was inadvertent error while submitting the Change in Law claim in the Petition as under:
- a) For the month of May 2021, Quantum of Mine Specific Coal supplied to DIL was 61918 MT as compared to 23223 MT considered in Petition (which was considered till 13 May, 2021 i.e., the date as on which the data was available at the time of filing the Petition).
- b) With respect of Impact of STC, the same has been erroneously computed at a flat rate of Rs 15.75 instead of slab wise rate. MSPGCL recognizes that the coal to DIL has been supplied from different mines for which the distance of loading point from the pithead varied and therefore, STC has been levied by WCL at differential rates depending on the applicable distance. The same is available as per WCL Notification vide ref. No. NGP/WCL/M&S/Comml/2019/1781 dated 24 December 2019.
- 22.2 Since the data was available with the coal office at Nagpur for which there may be a considerate time to collect and collate such data in the Petition, MSPGCL has submitted the CIL claim with the basic intention to approve the methodology of allowing CIL under FAC mechanism. Once the said methodology is approved by the Commission, then based on the actual quantity upliftment by DIL and billing, the amount was to be recomputed and to be claimed under FAC.
- 22.3 MSPGCL submits that on correction of the aforesaid errors, the revised claim of change in law on account of increase in price of mine specific coal w.e.f. 02 November, 2019 and increase in STC w.e.f. 25 December, 2019 for the period from November 2019 to May 2021 is Rs 23.80 Crore and Rs 1.83 Crore respectively resulting in a total claim of Rs. 25.63 Crores, the details of which is provided below:

Computation of CIL for the period 2 November, 2019 to 31 May, 2021 (Rs. Crores)

Sr.	Particulars	DIL	MSPGCL	Difference
1	Impact due to Mine Specific	23.80	23.80	0.00

Sr.	Particulars	DIL	MSPGCL	Difference
a	from 02.11.2019 to 31.12.2020	15.19	15.19	0.00
b	from 01.01.2021 to 31.05.2021	8.61	8.61	0.00
2	Impact due to Surface Transportation Cost	1.94	1.83	0.11
3	Total CIL Claim (1+2)	25.74	25.63	0.11

22.4 It is further submitted that the said quantity and claim of MSP is also in consonance with claim of DIL. However, with respect to Surface Transportation Cost, whereby certain quantity received in the month of March 2021 to May 2021 where from the mine located above 20 km on which there is no Change in rate whereas the same is considered by DIL in the Slab of 10-20 km which has the impact of Rs. 15.75/Ton and the same is computed by DIL in their claim.

22.5 With respect to the claim for the period between June 2021 to March 2022, MSPGCL is in the process of the contract closure with DIL whereby the impact of Change in Law claims along with the debit/credit notes has to be finalised, so that no liability arises in future with respect to Case -IV contract.

22.6 MSPGCL submits that the claim towards Change in Law with respect to Case -IV Contract, is finalised only when all the debit/credit notes are issued by WCL. However, the issue of Debit/Credit Note by WCL sometimes takes considerable time period of 3 to 4 months and in case the sample is referred to referee, then the time period for final settlement may vary by more than 6 months.

22.7 However, MSPGCL has computed the CIL claim excluding the impact of Debit / Credit Note for total period of 2 November, 2019 to 31 March, 2022 which includes the following Change in Law impact and has been calculated based on the quantity dispatch to DIL under Case IV contract (Phase II):

Sr.	Component	Ref.	Dated	Impact
1.	Mine Specific Coal	WCL/GM/M&S/2019/307	01.11.2019	Increase of Rs. 450/T for 11 mines. Impact (including taxes and duties) is Rs. 559.82/T
2.	Surface Transportation Cost	NGP/WCL/M&S/Comml/2019/1781	24.12.2019	Impact including taxes and duties: • Rs. 4.20/T (0-03 km) • Rs. 15.75/T (10 to 20 km)
3.	Price of Coal	NGP/WCL/M&S/Comml/2020/626	01.12.2020	Price increased by Rs. 10/T for all grade.

Sr.	Component	Ref.	Dated	Impact
				Total impact of Rs. 12.44/T including taxes and duties.
4.	Evacuation Charges	NGP/WCL/M&S/133	01.08.2021	Impact including taxes and duties is of Rs. 10.50/T
5.	Surface Transportation Cost	NGP/WCL/M&S/723	25.12.2021	Impact including taxes and duties: <ul style="list-style-type: none"> • Rs. 4.20/T (0-03 km) • Rs. 26.25/T (10 to 20 km)

22.8 There has been an increase in Evacuation Facility Charges from Rs 50/Ton as prevalent on the bid submission date to Rs 60/Ton w.e.f. 01.08.2021. Further, there was again a revision in Surface Transportation Cost from pit-head to the loading point of coal for all existing lead distance w.e.f. 25 December, 2021. In addition to the above, there was a revision in the coal prices by Rs. 10/Ton for all grade resulting in the total impact of Rs. 12.44/T including taxes and duties w.e.f. 01 December, 2020.

22.9 MSPGCL would like to submit that MSPGCL had considered only the period of 1 January, 2021 to 31 May, 2021 for change in Law Claims against MSP coal in the original Petition. In the earlier additional submission under Case No. 128 of 2021 the period was included but limited for the period from 02 November, 2019 to 31 May, 2021. In a nutshell on the issue of MSP coal, original Petition includes the period of 1 January, 2021 to 31 May, 2021 and additional submission includes the period of 02 November, 2019 to 31 December, 2020. Further, MSPGCL had prayed in their earlier submission to allow MSPGCL to recover the claim for the period of 1 June 2021 to 31 March 2022 as per same principles as may be approved by the Commission.

22.10 However, since the contract of DIL is completed by 31st March 2022, the process of reconciliation is still going on, MSPGCL requests the Commission to expand the scope of the Petition till 31 March 2022. Accordingly, MSPGCL is hereby submitting the provisional details for the period from 01 June, 2021 to 31 March 2022 providing the expected Change in Law Claim on the similar principles on the basis of which the earlier claims were made in this Petition.

22.11 Based on the above Change in Law events, MSPGCL has recomputed the claim against the Case IV Contract and which is prayed before the Commission to allow recovery of claim towards change in law events for the period November 2019 to March 2022 and request the Commission to allow the same. The details of the computation is as provided below:

(Rs Crs)

Sr.	Particulars	02.11.2019 to 31.12.2020	01.01.2021 to 31.05.2021	01.06.2021 to 31.03.2022	Total
1	Impact due to Mine Specific	15.19	8.61	40.37	64.17
2	Impact due to Surface Transportation Cost	1.32	0.51	1.41	3.24
3	Impact due to Evacuation Charges	-	-	0.68	0.68
4	Impact due to Revision in Coal Prices	0.12	0.55	0.97	1.64
5	Total CIL Claim (1+4)	16.63	9.67	43.44	69.74

22.12 MSPGCL requests to the Commission to allow to adjust any impact of Debit/Credit note with respect to the grade variation post finalisation of the data and at the time of closure of contract, under FAC mechanism.

22.13 DIL has claimed carrying cost in terms of Clause 10.4.2 and 10.5.2 of the DPA dated 18 October, 2019. MSPGCL submits that the said clause 10.4.2 relied upon by DIL refer to payment of interest in case of any amount which is payable upon adjudication of dispute. Further, the clause 10.5.2 in respect of late payment surcharge is in view of non-payment by MSPGCL.

22.14 There is no delay whatsoever from MSPGCL in making any payment nor has DIL raised any such demand for late payment surcharge, and it has for the first time made claim of carrying cost by relying on certain clauses of DPA as mentioned herein above which nowhere specify the levy of carrying cost as claimed by DIL.

22.15 MSPGCL would like to resubmit that in case No. 296 of 2019, the Commission has issued following directions, whereby it had directed MSPGCL to approach separately for approval of Change in Law Claims for coal tolling arrangement. The relevant extract of the order is as reproduced as under:

“2.1.22 As regards the coal tolling arrangement, MSPGCL has submitted that as per MoP Guidelines regarding Case-IV, the claim for Change in Law is to be passed on to MSEDCL and requested the Commission to allow MSPGCL to raise the supplementary bills once the final reconciliation is completed. The Commission is of the view that the objective of coal tolling arrangement is to optimise the cost of generation and therefore before passing on the Change in Law adjustments for tolling arrangement, it needs to be ensured that the overall costs of power supplied under tolling arrangement is lower than the cost of generation from MSPGCL stations considered for tolling. Hence, it would not be appropriate to allow MSPGCL to raise the supplementary bills for Change in Law without carrying out prudence check. MSPGCL may approach the Commission separately for approval of Change in Law claims for coal tolling arrangements with complete details and impact on tariffs for power supplied under coal tolling arrangement.”

- 22.16 MSPGCL submits that since the coal supply is within the purview of Change in Law , therefore as per provision under clause 5.1.14 of DPA, non-supply of coal or shortage in supply by Coal Company to the Seller shall be treated as "Force majeure" and there will be no liability on either party.
- 22.17 Accordingly, while adhering to the direction of the Commission, MSPGCL has complied with the said directives by filing the Petition for approval of such claim of change in law for coal tolling arrangements under Case IV, Phase II with DIL. Also, any payment towards Change in Law can be made only after approval of the Commission.
- 22.18 With respect to the DIL's submission that it has made the upfront payment of coal based on the price of the coal prevalent on the bid submission date as per terms of DPA and the estimated coal quantum required for meeting the forecast demand of MSEDCL, it has not received requisite quantity of coal, MSPGCL submitted as under:
- a) MSPGCL in its various correspondence to WCL has objected and not provided acceptance of supply from Mine Specific Sources of WCL with add on prices.
 - b) In its letters to WCL, MSPGCL has clearly stated that, without any consent from MSPGCL, WCL has initiated supply of coal from Mine Specific Sources from 2 November 2019 to MSPGCL. The supply of such coal is not as per the mine specific policy of Coal India Limited and also voids the FSA terms and Conditions as no documents as been signed between both the parties. Thus, implementing mine specific policy seems unilaterally benefiting to WCL, so main purpose of policy for sharing profit equitably to consumer & producer is getting defeated.
 - c) However, considering the monopolistic position in the market, WCL has not considered the issue raised in any communication of MSPGCL and has continued supplying coal from Mine Specific Sources and arbitrarily started raising invoices to MSPGCL with add on price of Rs. 450/- per MT for supply, which was contrary to the terms of main FSA signed between WCL and MSPGCL. Accordingly, to avoid any major burden of cost on the end users, MSPGCL had been denying the claim of Mine Specific Cost to WCL and hence was also not considered for DIL also that time.
 - d) However, taking advantage of its dominant position, WCL has started reducing the realisation of the notified price coal to MSPGCL resulting in much severe depletion in coal stock at various power plants of MSPGCL. Therefore, under such pressure tactics and adamant dominant position of WCL, MSPGCL decided to agree with the Mine Specific Source coal.
- 22.19 As per Clause 8.2.5 of the DPA, in case of any shortage in availability of coal, whereby MSPGCL will not be held responsible for the same, Coal will be allocated to Seller on the basis of the ranking of the MSPGCL plant under MoD mechanism. Therefore, in line with the coal availability from Coal India / WCL, the allocation of coal is made and due

to the dispute in the matter related to Mine Specific Source, the Coal realisation from WCL dropped drastically.

22.20 As per Clause 8.2.2 of the DPA, in respect of reconciliation of quantity, any excess/shortfall quantity of coal transferred to the Seller shall be adjusted in the next month post reconciliation and to be adjusted accordingly considering the performance parameters and accordingly the adjustments are done.

Rejoinder dated 8 June, 2022 to MSEDCL's submission:

22.21 Reconciliation work for the settlement of claims between Coal India Limited and MSPGCL is already in process to arrive at accepted figures.

22.22 MSPGCL has agreed for payment of MSP coal for the period 02 November, 2019 to 31 December, 2020, considering the fact that the realization of notified price coal was very less as only few mines were under notified coal prices and was resulting in much severe depletion in coal stock at various power plants of MSPGCL.

22.23 As stated in earlier submissions it is reiterated that to avoid immediate cash outflow, MSPGCL has taken the stand that the said amount will be adjusted against the pending claims towards credit note sought as per FSA viz. short delivery, grade slippage, surface moisture, stone claims etc. from WCL. The said credit may not be necessarily against the coal supplied for the period 02 November, 2019 to 31 December, 2020. The said adjustment was sought to be done against the overall credit notes to be received from WCL of MSPGCL.

22.24 The debit/credit adjustments is a continuous process and happens on a monthly basis which is accordingly adjusted in the accounts of WCL outstanding dues. It is also submitted that MSPGCL has accepted the fact that payment related to mine-specific charges has to be done to WCL from the date of the implementation i.e., 2 November, 2019. Accordingly, the said amount is being claimed under Change in Law as per the notification issued by WCL.

22.25 As per Fuel Supply Agreement (FSA) Clause regarding settlement of dispute, differences or disputes between the MSPGCL & WCL is endeavored to be resolved amicably. Accordingly, MSPGCL formed a committee, for reconciliation & settlement of long pending claims. Thereafter, meetings were held in the month of August, 2021, & May, 2022 for settlement of such claims. However, issue regarding long pending claims requires substantial time due to compilation of information to be gathered from various fields. Reconciliation work for the settlement of aforesaid claim is already in process by MSPGCL team with WCL to arrive at accepted figures. Meetings were conducted since August 2021. However, it may take time for settlement of long pending claim.

22.26 The comparison made by MSEDCL with variable charge of DIL along with impact of mine-specific coal for June 2020 to October 2020 is not correct comparison as the impact of MSP coal has not been considered in the variable rate of MSPGCL Plant also. In case such impact might have been considered, then there may not have been deviation in the MoD principle. MSEDCL has made some factual mistakes while making the computations.

22.27 With respect to MoD rate considered for Chandrapur Unit 5 for the month of June 2020 (03 June 2020 to 6th June 2020), the MoD rate as disclosed by MSLDC on their website is Rs. 2.9907/kWh against the rate of Rs. 2.769/kWh considered by MSEDCL. The rate of Rs. 2.769/kWh considered by MSEDCL was for the period from 12th June 2020 to 11th July 2020).

22.28 MSEDCL while calculating the total impact amount has considered the Zero Schedule of the Plant for the whole day for the period of outage. i.e., in case the plant is having zero schedule for 3 days then the impact considered for MSEDCL is for 3 days * 24 hours = 72 hours. However, it is submitted that the Plant under zero schedule is for the specific period of the day and the same is outlined as below:

Month	Name of Plant	Date of Zero Sch.	Time	Date of Sync.	Time	Zero Schedule Hours - MSPGCL	Zero Schedule Hours - MSEDCL
June 20	Paras -3	19-06-2020	02:00	23-06-2020	06:13	100.13	120.00
August 20	Koradi 10	13-08-2020	00:08	14-08-2020	24:00	47.52	48.00
August 20	Bhusawal 4	15-08-2020	02:21	24-08-2020	10:40	224.19	240.00
August 20	Koradi 10	25-08-2020	00:00	25-08-2020	03:08	3.08	24.00
September 20	Bhusawal 4	20-09-2020	20:14	25-09-2020	17:43	117.29	144.00
September 20	Parli 8	14-09-2020	20:45	17-09-2020	24:00	75.15	96.00
October 20	Parli 8	01-10-2020	00:00	06-10-2020	13:58	133.58	144.00
December 20	Adani 4	15-12-2020	23:48	15-12-2020	24:00	0.12	24.00

22.29 It is observed from the submission of MSEDCL, that in the month of February 2021, Adani Unit No. 4 was under Zero Schedule on 16 February 2021 having MoD rate of Rs. 2.822/kWh which is still a lower than the variable charge of Rs. 2.889/kWh. MSPGCL would like to submit, that even though the rate of DIL is higher than Adani Unit 4, the same was not declared under Zero Schedule.

22.30 Hence, the impact of any Mine Specific Price on such period may hardly have any impact on scheduling part.

22.31 Further, for the month of December, 2020, the variable charges of DIL was lower than Adani Unit No. 4, whereas for February, 2021, the comparison is sought to be made with Adani Unit No. 4 whereby rate of DIL is higher. It is submitted that such comparison is only for a single day wherein the thermal power plant cannot be given zero schedule considering the time required for cold startup of any thermal generating unit.

- 22.32 MSEDCL under their submission has stated that submission of MSPGCL that “even after considering the Change in Law impact of Mine Specific coal, there may not have been any deviation in the MoD principle” is not fully correct and rather there is a considerable financial impact upon MSEDCL due to not adding said Change in Law for MoD purpose in base tariff of DIL. Therefore, MSPGCL would like to reiterate their submission, that there is no-impact of change in law on scheduling of generator based on MoD principle, even after considering the CIL impact of Mine Specific Coal.
- 22.33 MSPGCL has computed the Change in Law claim excluding the impact of Debit / Credit Note for total period of 2 November, 2019 to 31 March, 2022 which includes all the Change in Law impact and has been calculated based on the quantity despatch to DIL under Case IV contract (Phase II).
- 22.34 MSPGCL has recomputed the claim against the Case IV Contract to allow recovery of claim towards Change in Law events for the period November 2019 to March 2022 is of Rs. 69.74 Crores.
23. At the third hearing held on 10 June, 2022 the Commission heard the parties. The Commission enquired MSPGCL to clarify on the following:
- 23.1 Role of the State Electricity Regulatory Commission under Case -IV Bidding as per the MoP’s Guidelines.
- 23.2 To assess the percentage of Change in Law impact on the total contract value of the Case- IV Phase -II.
- 23.3 To assess the viability of the Case – IV Phase -II implementation against the schedule Of Nashik TPS considering the impact of Change in Law as claimed in the Petition.
- 23.4 Considering the provisions of MERC (State Grid Code) Regulations, 2020, to assess the viability of operating DIL Station under Case – IV Phase – II with other Generating Station so that MoD has not been affected.
- 23.5 Whether Agreement under Case – IV Phase – II covers the impact of Mine Specific Price Coal?
- 23.6 Whether MSP Coal has been implemented in other Companies of Coal India Limited?
- 23.7 Reasons for acceptance of Mine Specific Coal from WCL from 1 January, 2021 after the earlier opposition to same?
- 23.8 MSPGCL’s say on Carrying Cost claimed by DIL.
24. **MSPGCL in its additional submission (in both cases) dated 20 June, 2022 has submitted as under:**

24.1 Role of the State Electricity Regulatory Commission under Case -IV Bidding as per the MoP’s Guidelines:

- a) MoP has issued the Guidelines dated 20 February, 2017 on “Flexibility in utilisation of domestic coal and other measures for reducing the cost of power generation” providing the methodology for implementation of Case – IV.
- b) As per MoP Guidelines, under Case – IV, the ‘Buyer’ supplying Coal will invite Tariff Bids from the prospective IPP ‘Seller’ for use of domestic coal out of aggregated coal allocated to respective State and supplying power in lieu of transfer of such coal.
- c) As per the Guidelines, the ceiling Tariff to be considered for the Tariff Bid shall be the variable cost of generation of the State Generating Station whose Power is to be replaced by the generation from IPP.
- d) With respect to the approval of Tariff, as per Clause 7 of the Guidelines, it clarifies that since the quantum and Tariff discovered through the bidding process is within the approved Tariff Orders, the same will be considered to be deemed approved by the appropriate Commission.
- e) As per the Guidelines, in the Auction process if the number of Bidders responding to the RFP is less than two and procurer still wants to continue with the selection process then the consent of Appropriate Commission is required. Further, in case of commercial dispute, the resolution to be carried out by the Appropriate Commission.
- f) MSPGCL has approached the Commission for approval of Change in Law Claims for Coal tolling arrangement in line with the direction issued by the Commission in Case No. 296 of 2019.

24.2 To assess the percentage of Change in Law impact on the total contract value of the Case- IV Phase -II:

- a) The impact of Change in Law on the total contract value of Case -IV Phase II which calculated on a monthly basis as well as for the total contract period.

Month	Energy Schedule by DIL	Tariff offered by DIL	Total Invoice Value	Impact of CIL (include MSP, Evacuation Charges STC and revision in Cost)		
	Mus	Rs/ kWh	Rs. Crores	Rs. Crores	%	Rs. / kWh
1	2	3	4	5	6	7
Nov 19	112.42	2.889	32.48	1.32	4%	0.117
Dec 19	111.05	2.889	32.08	0.56	2%	0.050
Jan 20	118.28	2.889	34.17	0.61	2%	0.051
Feb 20	125.00	2.889	36.11	1.48	4%	0.118
Mar 20	125.91	2.889	36.37	1.52	4%	0.121
Apr 20	128.17	2.889	37.03	1.78	5%	0.139
May 20	134.46	2.889	38.84	0.68	2%	0.050

Jun 20	122.00	2.860	34.89	0.72	2%	0.059
Jul 20	118.85	2.781	33.06	0.60	2%	0.051
Aug 20	119.21	2.711	32.32	0.35	1%	0.029
Sep 20	112.84	2.790	31.48	1.36	4%	0.120
Oct 20	113.92	2.853	32.51	2.26	7%	0.198
Nov 20	116.46	2.889	33.65	1.52	5%	0.130
Dec 20	124.79	2.889	36.05	1.89	5%	0.151
Jan 21	120.62	2.889	34.85	0.71	2%	0.058
Feb 21	99.45	2.889	28.73	0.35	1%	0.035
Mar 21	124.37	2.889	35.93	2.23	6%	0.180
Apr 21	127.33	2.889	36.78	2.65	7%	0.208
May 21	122.77	2.889	35.47	3.73	11%	0.304
Jun 21	110.04	2.701	29.71	1.34	4%	0.121
Jul 21	121.95	2.574	31.39	4.98	16%	0.408
Aug 21	74.88	2.750	20.59	3.33	16%	0.445
Sep 21	105.65	2.804	29.63	4.18	14%	0.396
Oct 21	103.86	2.889	30.01	5.44	18%	0.523
Nov 21	116.90	2.842	33.22	5.16	16%	0.442
Dec 21	105.38	2.817	29.69	5.04	17%	0.479
Jan 22	120.19	2.884	34.66	5.26	15%	0.438
Feb 22	108.27	2.889	31.28	4.50	14%	0.416
Mar 22	111.48	2.889	32.21	4.20	13%	0.376
Total	3356.49	2.846	955.21	69.74	7%	0.208

- b) As can be observed from the above table, overall quantum of Change in Law impact on whole contract is only 7%. Post July, 2021, the impact of Change in Law has increased due to following reasons:
- i) The coal allocation from MSP coal has been increased which was on an average more than 90% of the total coal quantum.
 - ii) Increase in Evacuation Charges levied from August, 2021.
 - iii) Increase in Surface Transportation Charges levied from 25 December, 2021.
- c) In the earlier stages, MSPGCL has tried to keep the MSP coal to DIL at the minimum level. WCL has offered the maximum quantity of MSP coal to MSPGCL and DIL station resulting into 100% MSP coal in some of the months to DIL.

24.3 To assess the viability of the Case – IV Phase -II implementation against the schedule Of Nashik TPS considering the impact of Change in Law as claimed in the Petition:

- a) As per the Tariff Order dated 22 September, 2018 in Case No. 196 of 2017, the approved energy charges for Nashik TPS was Rs. 3.436 /kWh against which the quoted Tariff of DIL was Rs. 2.889 /kWh resulting in a savings of Rs. 0.547/ kWh.
- b) Even considering the additional Change in Law impact of Rs. 0.21 /kWh as outlined in the table above, the net saving is of Rs. 0.337/ kWh as compared to the approved Energy Charge Rate (ECR) for Nashik TPS in the Tariff Order.

- c) The comparison statement of the ECR considered in FAC for the contract period with DIL quoted Tariff with and without Change in Law impact is outlined below:

Month	Tariff offered by DIL	Impact of CIL	Tariff offered by DIL considering CIL	FAC rate of Nashik TPS considered for MoD	Difference
	Rs. / kWh	Rs. / kWh	Rs. /kWh	Rs. / kWh	Rs. / kWh
1	2	3	4	5	5
Nov 19	2.889	0.117	3.006	3.444	-0.44
Dec 19	2.889	0.050	2.939	3.702	-0.76
Jan 20	2.889	0.051	2.940	3.756	-0.82
Feb 20	2.889	0.118	3.007	4.150	-1.14
Mar 20	2.889	0.121	3.010	4.378	-1.37
Apr 20	2.889	0.139	3.028	4.121	-1.09
May 20	2.889	0.050	2.939	3.933	-0.99
Jun 20	2.860	0.059	2.919	3.950	-1.03
Jul 20	2.781	0.051	2.832	3.592	-0.76
Aug 20	2.711	0.029	2.741	3.601	-0.86
Sep 20	2.790	0.120	2.910	3.607	-0.70
Oct 20	2.853	0.198	3.051	3.607	-0.56
Nov 20	2.889	0.130	3.019	3.774	-0.75
Dec 20	2.889	0.151	3.040	3.627	-0.59
Jan 21	2.889	0.058	2.947	3.379	-0.43
Feb 21	2.889	0.035	2.924	3.435	-0.51
Mar 21	2.889	0.180	3.069	3.463	-0.39
Apr 21	2.889	0.208	3.097	3.350	-0.25
May 21	2.889	0.304	3.193	3.551	-0.36
Jun 21	2.701	0.121	2.822	3.623	-0.80
Jul 21	2.574	0.408	2.982	3.663	-0.68
Aug 21	2.750	0.445	3.195	3.697	-0.50
Sep 21	2.804	0.396	3.200	3.752	-0.55
Oct 21	2.889	0.523	3.412	3.761	-0.35
Nov 21	2.842	0.442	3.284	3.791	-0.51
Dec 21	2.817	0.479	3.296	3.819	-0.52
Jan 22	2.884	0.438	3.322	3.861	-0.54
Feb 22	2.889	0.416	3.305	3.901	-0.60
Mar 22	2.889	0.376	3.275	4.023	-0.76
Total	2.846	0.208	3.054	3.739	-0.69

- d) As can be seen from the above table, even in the case the impact of Change in Law is considered on the power scheduled and despatched by DIL under Case IV Phase – II against Nashik TPS, there has been still a saving of around Rs. 0.69 /kWh for overall contract period. This has mainly attributed to better heat rate of DIL as well as coal transportation cost.
- e) On a monthly basis, the saving is in the range of Rs. 0.25/ kWh to Rs. 1.37/ kWh for the energy scheduled from DIL under Case -IV Phase -II.

- f) Even after considering the impact of Change in Law, the Case -IV Phase – II contract with DIL has resulted into saving of Rs. 0.69/ kWh on an average resulting into lower burden on the consumers of MSEDCL.

24.4 Considering the provisions of MERC (State Grid Code) Regulations, 2020, to assess the viability of operating DIL Station under Case – IV Phase – II with other Generating Station so that MoD has not been affected.

- a) Even after considering the Change in Law impact in the ECR of DIL, there has not been much deviation in the MoD.
- b) From January, 2021 and May, 2021, the impact of Change in Law including MSP, has been considered while scheduling power from MSPGCL power stations and DIL.
- c) There is negligible impact of Change in Law on scheduling of Generator based on MoD (limited to only 3 days) even after considering the CIL impact of MSP Coal.

24.5 Whether Agreement under Case – IV Phase – II covers the impact of Mine Specific Price Coal?

- a) MSP was in effect from 2 November, 2019. The RfP for Case -IV Phase -II was issued on 10 June, 2019. The DPA was signed on 18 October, 2019. Therefore, the impact of MSP was never envisaged at the time of issuance of the Tender or signing of the DPA.
- b) Earlier, the Coal to be supplied by WCL was only at notified price and cost-plus basis. Accordingly, as per clause 1.1.9 of RfP and clause 5.2.8 of DPA, it was envisaged to supply G11 and G12 Grade Coal the notified price to IPP for which price schedule as on the date of issue of the Bid was provided.
- c) Considering the provisions specified in the Guidelines issued by MoP on 20 February, 2017, it was specified in the Agreement that any increase in cost of Coal, duties, and taxes on coal and the railway freight charges under Change in Law, post the date of submission of Bid as per the bidding documents and its amendments thereof, shall be borne by MSPGCL during the contract period and the same will be adjusted in FAC.
- d) As per clause 8.1 of FSA, Base price of coal in relation to the indigenous coal shall be notified / declared by Coal India Limited, as the case may be from time to time and as such covers any domestic coal as procured from Coal India Limited.
- e) Hence, in line with the proviso 8.1 of the FSA, the base price of the coal to be provided by Coal India Limited may undergo change from time to time and purchaser is obliged to procure the coal at the said rates. Accordingly, as per proviso 8.1 and 8.2 of the Guidelines of Case -IV, the clause was inserted in DPA that cost of coal as applicable on the date of bidding shall be paid by the Buyer which is to be

reimbursed by Seller and any increase in cost of coal, duties, and taxes on coal shall be borne by the Buyer during the contract period.

24.6 Whether MSP Coal has been implemented in other Companies of Coal India Limited?

For the said period, from the various Coal subsidiaries Companies of Coal India Limited, from where the entire coal was sourced by MSPGCL, the Mine Specific Coal was implemented in WCL.

24.7 Reasons for acceptance of Mine Specific Coal from WCL from 1 January, 2021 after the earlier opposition to same?

- a) The proposal of introduction of MSP was submitted by WCL in meeting dated 13 July, 2018, whereby it was explained that landed coal price for MSPGCL from MCL/ SECL was higher by about Rs. 1100 per tonne compared to WCL sources and hence if the coal quantum is allocated from WCL, even considering the sharing of cost by 50% of transportation benefit, there will be saving for MSPGCL and hence add-on charges proposed WCL was about Rs. 525-500 per tonne. The add-on charges were further reduced to Rs. 450 per tonne and the same was proposed to offer to MSPGCL.
- b) MSPGCL denied this offer as it adds to financial burden towards increased coal cost and requested Secretary, Ministry of Coal to issue directives to CIL to reduce basic coal cost of WCL at par with its other subsidiaries. i.e., MCL & SECL.
- c) Even the clear denial of the offer of WCL to buy MSP coal, WCL unilaterally issued MSP rate notice dated 1 November, 2019 for 11 specified mines and it made applicable to MSPGCL w.e.f. 2 November, 2019. As per the said circular, the coal rate for any coal procured from the said 11 mines will be levied at MSP. Accordingly, WCL started raising bills with add-on pricing of Rs. 450 per tonne on notified coal from Mine specific sources supply.
- d) MSPGCL through various letters, reiterated that the offer of WCL for supply of coal from Mine specific sources with add-on price of Rs. 450 per MT has not been accepted by MSPGCL. In addition to the above, no MoU has been signed between MSPGCL and WCL to that effect. However, as per WCL, it was communicated that signing of MoU for the aforesaid agreed allotment of coal is not mandatory and not required. WCL agreed that coal supplies shall be covered under the Fuel Supply Agreement terms.
- e) Initially when MSPGCL opposed price hike, MSP quantity was very less and hence the impact of the same was on a lower side. However, due to increase in demand, all units of MSPGCL were on bar and so as to meet generation target, around 1,20,000 MT coal was required per day. However, coal stock at Chandrapur, Koradi, and Khaparkheda TPS was depleting fast due to less receipt of coal and it was necessary to enhance coal receipts to build sufficient coal stock at all TPS as per the CEA norms.

- f) Therefore, in view of resolving the matter, a meeting was conducted via Video Conferencing between MSPGCL and WCL officials on 8 December, 2020 to augment supplies to MSPGCL. Further, WCL and MSPGCL, vide Minutes of the Meeting between WCL and MSPGCL signed on 16 December, 2020, also worked out a plan, post acceptance of MSP coal, to supply 1,10,000 MT per day and yearly 40 MMT of requisite quantity of Coal as follows:

Sr. No	Source	Quantity	Pricing	FSA Quantity	Excess
1	Non-Mine Specific Sources	9.0 MMT	Notified Price	17.53 MMT	13.27 MMT
2	Mine Specific Sources	21.80 MMT	Notified Price+ 450 per tonne add-on price		
3	Cost-plus Sources	9.2 MMT	Cost Plus Pricing (Mine wise)	4.91 MMT	4.29 MMT
Total		40 MMT		22.44 MMT	17.56 MMT

- g) Further it was also agreed by WCL that MCL FSA quantity shall be swapped to WCL so as to reduce the transportation cost. Considering the proposal of WCL to adjust the coal mix with MCL FSA, a comparison landed price analysis was carried out of MSP with MCL/ SCCL/ SECL Coal as outlined under:

TPS	Grade	WCL-FSA (Notified)	WCL-MSP	SCCL (Notified)	SECL (Notified)	MCL (Notified)
Koradi	G12	2523	3083	4064	3181	3181
Chandrapur	G12	2479	3039	3676	3268	3372
Khaperkheda	G12	2665	3225	4064	3181	3181

- h) From the above table, it was clear that WCL landed coal cost for MSP supply and notified supply is lower than other coal companies. Hence, the proposal of WCL to avail coal supply from Mine Specific Sources from WCL was accepted.
- i) Accordingly, in January, 2021, it was accepted to release the payment on account of Mine Specific Prices. However, due to financial constraints, MSPGCL further requested to adjust dues on account of Mine Specific Prices for a period of 2 November, 2019 to 31 December, 2020 from settled amount (related to Grade correction, etc.) of MSPGCL subject to reconciliation and the differential amount (if any) will be paid by MSPGCL, which was accepted by WCL.

- j) In addition to the above, during the peak COVID period, there was huge shortage of notified coal, whereby MSPGCL tried all ends to keep MSP coal quantity as less as possible.

24.8 MSPGCL’s say on Carrying Cost claimed by DIL:

- a) MSPGCL was always under the impression that the coal payment made by DIL will not be adjusted against the MSP coal due to the stand taken by MSPGCL under its various correspondence. However, WCL has not accepted the stand of MSPGCL resulting in such adjustment made by WCL against the payment made by DIL resulting in short supply of coal to DIL.
- b) The carrying cost was applicable on the cost burden of MSP coal, if paid by MSPGCL earlier under protest.
- c) MSPGCL denies any claim made by DIL or MSEDCL for consideration of carrying cost and in case of allowing such claim, the same shall be allowed as a pass-through as the same if paid to DIL, as per DPA and TPA of Case – IV was not allowed to be recovered under FAC mechanism as per direction in Case No. 296 of 2019.

Commission’s Analysis and Ruling:

25. The Commission notes that there are three phases of the Case -IV arrangements implemented by MSPGCL as under:

Phase	Total Capacity of bid	Period	Name of the Successful bidder	Ceiling Tariff	Quoted Tariff/Replaced tariff (generator)	Capacity Offered
Phase I	400 MW	15 th April 2018 – 13 th January 2019	Dhariwal Infrastructures Ltd (DIL)	Rs. 2.80/ kWh	Rs. 2.760/kwh/Rs. 3.05/kWh	185 MW
		21 st May 2018 (for 36 days)	Ideal Energy Projects limited (IEPL)			215 MW
Phase II	380 MW	2 nd Nov. 2019 to 31 st March 2022	Dhariwal Infrastructures Ltd (DIL)	Rs. 2.89/kWh	Rs.2.889/kWh/ Rs.3.551/kWh	185 MW
		Terminated due to event of default	Ideal Energy Projects limited (IEPL)			195 MW
Phase III	380 MW	Planned for 01 April, 2022 to 31 March, 2023	Ideal Energy Projects limited (IEPL)	Rs.3.359/kWh	Rs.3.358/kWh/Rs.3.861	180 MW

26. At the outset the Commission expresses its anguish at the manner in which MSPGCL is dealing with the Petition. They have made multiple submissions on ad hoc basis. Every submission is covering different issue (sometimes repetitive) for different periods (sometimes overlapping) and it appears that they themselves are not very sure as to what is it that they want to petition. MSPGCL definitely needs to pull up their strings while presenting matters to the Commission.

Having said this, the Commission, based on the multiple submissions by all the parties and arguments made in multiple hearings in the matter the Commission has analysed all the submissions and framed issues for consideration in the matter as under:

- a) Whether the Case No. 128 of 2021 and 48 of 2022 are same and requires combined dispensation in terms of the Commission's Ruling? Whether case no. 48 of 2022 has become infructuous?
- b) Whether the Petition in Case No. 128 of 2021 is maintainable in terms of the Limitation period?
- c) Whether the MOD was impacted by the claims of Change in Law and whether the other cheaper Unit has not been backed down on account of DIL Unit?
- d) Whether the claim made by MSPGCL qualifies for "Change in Law" and whether relief can be granted in the present matter?
- e) Whether the coal quantity and quality under the Contract has been reconciled and is it beneficial to the end consumers of MSEDCL?
- f) If the claims made by MSPGCL qualifies for "Change in Law" then what should be the amount of claim to be allowed?
- g) What are the modalities for carrying cost?
- h) What would be the recovery mechanism for the amount allowed as a pass through?

27. The issue wise analysis and Commissions Ruling on these issues are as under:

28. **Issue (a): Whether the Case No. 128 of 2021 and 48 of 2022 are same and require combined dispensation in terms of the Commission's Ruling? Whether case no. 48 has become infructuous?**

28.1 The Commission notes that the Petition in Case No. 128 of 2021 has been filed by MSPGCL on 17 September, 2021 seeking approval of Change in Law claims related to Coal Tolling arrangement with DIL under Case -IV Phase-II.

- 28.2 The Commission also notes that the Petition in Case No. 48 of 2022 has been filed by DIL on 23 February, 2022 seeking approval of Change in Law claims related to Coal Tolling arrangement under Case -IV Phase-II.
- 28.3 The Commission notes that DIL has filed the Case No. 48 of 2022 seeking the same Change in Law claims for Case - IV Phase -II for which MSPGCL has filed the Case No. 128 of 2021. After perusal of the documents and as the parties agreed, the Commission heard both the Cases together and decided to issue the combined Order.
- 28.4 The Commission notes that the only difference between these two Cases was the computations and the difference of events of the Change in Law considered by both the parties.
- 28.5 However, MSPGCL in its latter submission dated 8 June, 2022 has accepted some errors in its computations. Further MSPGCL rectified those errors and detailed out its revised claim and submitted whole Claim for the contract period from 1 November, 2019 to 31 March, 2022 including all the Change in Law events which were initially not included in its Original Petition. DIL also agreed that all the issues were covered now in Case No. 128 of 2021 after the submission dated 8 June, 2022 submitted by MSPGCL and hence only issue remained in Case No. 48 of 2022 was of the Carrying cost.
- 28.6 In view of the above the Commission decided to address the main Petition in Case No. 128 of 2021 as main Petition originally filed by MSPGCL seeking claims of Change in Law for Case -IV Phase -II, however, the Commission has framed the issues based on the submissions made in both the Cases including the issue of Carrying cost which is raised in Case No. 48 of 2022. To that extent, case no. 48 of 2022 is not infructuous.
- 29. Issue (b): Whether the Petition in Case No. 128 of 2021 is maintainable in terms of the Limitation period?**
- 29.1 MSEDCL has contended that as per the provisions of MERC (State Grid Code) Regulations, 2020 (Grid Code Regulations), MSPGCL was supposed to file its Petition before the Commission with its claim for "Change in Law" within a period of one month from the date of first occurrence of such event. However, MSPGCL did not approach the Commission within the time as specified in the Grid Code Regulations. It was also contended that the revised rates were necessary to be determined in time for incorporation in the merit order stack of the generation.
- 29.2 MSPGCL has argued that the Petition has been filed by MSPGCL in compliance of the directives by the Commission in the Order dated 30 March, 2020 in Case No. 296 of 2019 asking MSPGCL to file separate Petition for approval of the Change in Law claims for coal tolling arrangement under Case -IV Phase-II. Though the issue in this regard was raised in the Review Petition in Case No. 180 of 2020, the Commission had reiterated the directions given in the MYT Order dated 30 March, 2020. MSPGCL has submitted that it had already brought the issue of CIL on account of the Case -IV bidding

in its MYT Petition wherein the Commission had directed MSPGCL to submit a separate Petition.

- 29.3 The Commission notes the submission of MSPGCL regarding the exemption from Limitation Act vide the Order dated 23 March, 2020 passed by Hon'ble the Supreme Court in Suo Motu Petition No.3/ 2020 wherein limitation period of all proceedings, before all judicial/ quasi-judicial got extended till 28 February 2022.
- 29.4 With regard to the delay in submission of Change in Law Petition, the Commission notes that Grid Code Regulations, 2020 were notified on 2 September, 2020 in the official Gazette and are in force from the date of its Notification. The present contract commenced from 1 November 2019. These Regulations thus cannot be applied in the present case retrospectively for the period between 1 November 2019 to 2 September 2020. The said Regulations will however be applicable in this case also for the period post 2 September 2020.
- 29.5 The Commission further notes that MSPGCL had submitted the issue of coal tolling arrangement and the CIL claim in its MYT Petition which was filed on 30 November, 2019. The relevant abstract of the MYT Order dated 30 March, 2020 is as under:

“ 2.1.12 MSPGCL submitted that under coal shortage scenario, stations near mines viz, Chandrapur and Khaperkheda could afford to use cost plus coal supplied by WCL and stations located far off from the mines were considered for supply of linkage cost in order to optimize the generation cost. Further, Coal Tolling was considered by MSPGCL as per detailed procedures/ approach provided by MOP. MSPGCL submitted that while the coal could not be supplied under tolling arrangement as envisaged, however, to the extent the coal was supplied to the selected bidders, MSEDCL has gained from the resultant low cost offered by the bidders in comparison to the cost of generation from MSPGCL stations considered for tolling.

2.1.13 MSPGCL submitted that it has completely passed on the benefits of coal tolling to MSEDCL being the difference in approved energy charge of Nashik and Bhusawal units vis-à-vis the price discovered in tolling process. In case the coal would have been utilised in MSPGCL stations, the cost would have been considered in tariff being the actual landed cost of fuel. In case of bids for tolling, such instances require consideration towards change in law aspects in accordance with the MoP Guidelines regarding Case-IV, which may have to be paid after final reconciliation. It is for such incremental costs arising out of Change in Law after reconciliation, that MSPGCL has pleaded in the Petition for consideration by the Commission.”

- 29.6 The Commission in the MYT Order dated 30 March, 2021 in Case No. 296 of 2019 has ruled as under:

“2.1.22 As regards the coal tolling arrangement, MSPGCL has submitted that as per MoP Guidelines regarding Case-IV, the claim for Change in Law is to be passed on to MSEDCL and requested the Commission to allow MSPGCL to raise the supplementary

bills once the final reconciliation is completed. The Commission is of the view that the objective of coal tolling arrangement is to optimise the cost of generation and therefore before passing on the Change in Law adjustments for tolling arrangement, it needs to be ensured that the overall costs of power supplied under tolling arrangement is lower than the cost of generation from MSPGCL stations considered for tolling. Hence, it would not be appropriate to allow MSPGCL to raise the supplementary bills for Change in Law without carrying out prudence check. MSPGCL may approach the Commission separately for approval of Change in Law claims for coal tolling arrangements with complete details and impact on tariffs for power supplied under coal tolling arrangement.”

29.7 In view of the above, the Commission is inclined to accept the submission of MSPGCL regarding the maintainability of the Petition in Case No. 128 of 2021 on issue of delay in filing the Petition raised by MSEDCL.

30. Issue (c): Whether the MOD was impacted by the claims of Change in Law and whether the other cheaper Unit has not backed down on account of DIL Unit?

30.1 MSEDCL has contended that the revised rates were necessary to be determined in time for incorporation in the merit order stack of the generation.

30.2 MSEDCL contended that it was observed from the data that DIL was scheduled on some occasions when the rate of other lower rate Units were under reserve/ zero shut down. Therefore, the tentative impact of such scheduling of DIL on MSEDCL is 87.84 Lakhs for period of November, 2019 to May, 2021.

30.3 MSPGCL argued that the comparison made by MSEDCL with variable charge of DIL along with impact of mine-specific coal for June 2020 to October 2020 is not a correct comparison as the impact of MSP coal has not been considered in the variable rate of MSPGCL Plant also. In case such impact might have been considered, then there may not have been deviation in the MoD principle. MSEDCL has made some factual mistakes while making the computations.

30.4 MSPGCL further argued that from May, 2021, the impact of Change in Law including MSP, has been considered while scheduling power from MSPGCL power stations and DIL. There is negligible impact of Change in Law on scheduling of Generator based on MoD (limited to only 3 days) even after considering the CIL impact of MSP Coal.

30.5 The Commission also notes the submission of MSPGCL that increase in price of coal was to be borne by MSPGCL during contract period and accordingly its tariff needed to be revised under MoD principle. Accordingly, since January, 2020, while submitting the MoD rates for Case-IV contract, MSPGCL had factored the Rs. 0.01 / kWh rise on account of change in Surface Transportation Charges. However, as MSPGCL was not paying as per incremental rate of MSP up to 31 December, 2020, the impact of such additional price was not considered by MSPGCL as “Change in Law” impact for MoD

rate purpose. In June, 2021 the impact of MSP was added to the quoted tariff for submission of MoD rates to MSEDCL.

30.6 In this regard the Commission has analysed the data of the MoD during the Period of November, 2019 to December, 2020. The Units which were under backing down (Zero schedule) during this period are considered for the analysis during this period to compare with DIL.

30.7 The following table shows the impact of Change in Law on the MoD for November, 2019 to December, 2020:

Name of Unit	Date Trip	Date Sync	Month	MoD Rate	DIL Rate	Impact of CIL	Total Rate of DIL#
				Rs./kWh	Rs./kWh	Rs./kWh	Rs./kWh
RPL(AMT) U-3	25-10-2019	01-02-2020	Oct/Nov-2019	3.343	2.889	0.12	3.009
RPL(AMT) U-2	25-10-2019	01-02-2020	Oct/Nov-2019	3.343	2.889	0.12	3.009
RPL(AMT) U-4	26-10-2019	06-11-2019	Oct/Nov-2019	3.343	2.889	0.12	3.009
RPL(AMT) U-5	26-10-2019	04-11-2019	Oct/Nov-2019	3.343	2.889	0.12	3.009
KHAPARKHEDA (Unit 1- 4)	27-11-2019		November-2019	3.325	2.889	0.12	3.009
RPL(AMT) U-5	09-11-2019	04-02-2020	November-2019	3.343	2.889	0.12	3.009
RPL(AMT) U-4	12-11-2019	23-12-2020	November-2019	3.343	2.889	0.12	3.009
BHUSAWAL (Unit 4-5)	29-12-2019		December-2019	3.097	2.889	0.05	2.939
KHAPARKHEDA (Unit 1- 4)	31-12-2019		December-2019	3.295	2.889	0.05	2.939
KHAPARKHEDA (Unit 1- 4)	01-01-2020		January-2020	3.110	2.889	0.05	2.939
PARALI (UNIT 8)	12-01-2020		January-2020	3.217	2.889	0.05	2.939
PARALI (UNIT 6-7)	01-01-2020		January-2020	3.349	2.889	0.05	2.939
RPL(AMT) U-1	25-01-2020	30-01-2020	January-2020	3.356	2.889	0.05	2.939
PARALI (UNIT 6-7)	11-02-2020		February-2020	3.310	2.889	0.12	3.009
RPL(AMT) U-1	08-02-2020	26-02-2020	February-2020	3.362	2.889	0.12	3.009
RPL(AMT) U-2	09-02-2020	17-02-2020	February-2020	3.362	2.889	0.12	3.009
RPL(AMT) U-3	11-02-2020	21-12-2020	February-2020	3.362	2.889	0.12	3.009
RPL(AMT) U-5	11-02-2020	23-12-2020	February-2020	3.362	2.889	0.12	3.009
KHAPARKHEDA Unit 5	30-03-2020		March-2020	3.066	2.889	0.12	3.009
RPL(AMT) U-1	04-03-2020	18-12-2020	March-2020	3.369	2.889	0.12	3.009
RPL(AMT) U-2	09-03-2020	01-12-2020	March-2020	3.369	2.889	0.12	3.009
KHAPARKHEDA (Unit 1- 4)	22-04-2020		April-2020	3.128	2.889	0.14	3.029
Trombay 8	11-04-2020	12-10-2020	April-2020	3.385	2.889	0.14	3.029

KHAPARKHEDA (Unit 1- 4)	03-05-2020		May-2020	3.128	2.889	0.05	2.939
PARAS (Unit 3- 4)	19-06-2020		June-2020	2.975	2.889	0.06	2.949
Adani U-5	04-06-2020	11-09-2020	June-2020	3.099	2.889	0.06	2.949
Adani U-4	12-06-2020	03-09-2020	June-2020	3.099	2.889	0.06	2.949
DTPS Unit 1	27-06-2020	18-09-2020	June-2020	3.509	2.889	0.06	2.949
Dhariwal	12-07-2020	12-07-2020	July-2020	2.760	2.889	0.05	2.939
BHUSAWAL (Unit 4-5)	15-08-2020	24-08-2020	August-2020	2.685	2.889	0.03	2.919
BHUSAWAL (Unit 4-5)	04-08-2020	10-08-2020	August-2020	3.089	2.889	0.03	2.919
SWPGPL U-3	12-08-2020	07-10-2020	August-2020	3.009	2.889	0.03	2.919
SWPGPL U-4	12-08-2020	07-10-2020	August-2020	3.009	2.889	0.03	2.919
BHUSAWAL (Unit 4-5)	20-09-2020	25-09-2020	September-2020	2.685	2.889	0.12	3.009
PARALI (UNIT 8)	14-09-2020	30-09-2020	September-2020	2.948	2.889	0.12	3.009
PARALI (UNIT 6-7)	22-10-2020	31-10-2020	October-2020	2.982	2.889	0.2	3.089
NASHIK (Unit 3-5)	27-11-2020		November-2020	3.607	2.889	0.13	3.019
RPL(AMT) U-2	08-12-2020	16-12-2020	December-2020	2.876	2.889	0.15	3.039
Koradi (Unit 6 -7)	06-12-2020		December-2020	3.244	2.889	0.15	3.039
Adani U-4	15-12-2020	16-01-2021	December-2020	3.383	2.889	0.15	3.039
Adani U-5	16-12-2020	02-01-2021	December-2020	3.383	2.889	0.15	3.039
Adani U-1	16-12-2020	18-01-2021	December-2020	3.383	2.889	0.15	3.039

30.8 As can be seen from the above table, that during the period of November, 2019 to December, 2020, there are only few incidences wherein the DIL was scheduled even if its variable cost was more than the Units Parli Unit (8) Parli (6-7) and RPL (Unit-2). The Commission opines that whenever such incidences have occurred the cost cannot be passed on the consumers. It is also pertinent to note that the MSPGCL Units (Parli Unit 8 and Parli Unit (6&7) are also subjected to the MSP hence the variable cost of these Units may have also added for MSP for the comparison. This will require a detailed analysis and scrutiny by MSPGCL and MSEDCL.

30.9 The Commission further notes the submission of MSPGCL that even after considering the Change in Law impact in the ECR of DIL, there has not been much deviation in the MoD. The Commission cannot accept such ad hoc and general statements and provisions of grid code are required to be followed. MSPGCL has further submitted that, from January, 2021, the impact of Change in Law including MSP, has been considered while scheduling power from MSPGCL power stations and DIL. There is negligible impact of Change in Law on scheduling of Generator based on MoD (limited to only 3 days) even after considering the CIL impact of MSP Coal. Thus, scheduling of the DIL's Unit during the Contract period was done considering the possible impact of such increase in variable charge. Commission expects the parties to follow the Grid Code Regulations and does

not find the reasons given by MSPGCL sufficient, for not acting as per the provisions of the Grid Code Regulations. However, Commission does not see any wilful default on the part of MSPGCL since the MoD rate has been modified (though with a delay) as per the regulatory provisions for effecting the Change in Law event subsequently.

31. Issue (d): Whether the claim made by MSPGCL qualifies for “Change in Law” and whether relief can be granted in the present matter?

31.1 The Commission notes MSPGCL’s submission that after following due E-tendering process, it had issued Letter of Award to Dhariwal Infrastructure Ltd for 185 MW against one Unit of Nashik Thermal Power Plant on 13 September, 2019.

31.2 After the bid submission date i.e., 10 July, 2019, there were following changes in the price of coal on account of revision of the charges by the Coal India Limited (WCL):

- a) Mine Specific Coal Charges (w.e.f. 01.11.2019),
- b) Surface Transportation Charges (w.e.f. 24.12.2019),
- c) Change in Basic price of coal (w.e.f. 1.12.2020)
- d) Evacuation facility charges (w.e.f.01.08.2021),
- e) Change in Surface Transportation Charges (w.e.f. 25.12.2021).

31.3 The Commission notes that there are five components on which MSPGCL has claimed the Change in Law in its revised submission dated 8 June, 2022 as under:

a) Price change on account of Mine Specific Price Coal:

- i) WCL issued notification vide WCL/GM/M&S/2019/307 dated 1 November, 2019.
- ii) The Commission notes that there is increase of Rs. 450/T for 11 mines. Impact including taxes and duties is Rs. 559.82/T.
- iii) This change in the rate of MSP coal was after the submission of the Bid and prior to actual commencement of supply.

b) Surface Transportation Charges:

- i) MSPGCL submitted that the rate of the Surface Transportation Charges as on the date of Bidding (i.e., 10 July, 2019) was Rs. 100 per MT.
- ii) After the Bid submission date, the rate of the Surface transportation charges was increased to Rs. 115 per MT vide the Notification dated 24 December, 2019.
- iii) The Commission notes that there is increase of Rs. 15 per MT in the Surface transportation charges after the submission of the Bid.
- iv) This change in the rate of Surface Transportation charges was after the submission of the Bid.

- v) As per Case IV Guidelines, any increase in cost of coal, duties and taxes on coal after bid submission date shall be borne by the Buyer during the contract period. Therefore, this is Change in Law and hence the claim for adjustment of additional costs (“Change in Law”) to be borne by MSPGCL is to be passed on to MSEDCL, either through Fuel Adjustment Surcharge bills or as additional claim in truing up process.
- c) Change in Basic Price of Coal:**
- i) that the rate of the Basic cost of the Coal as on the date of Bidding (i.e., 10 July, 1019) was Rs. 1145 per MT.
- ii) After the Bid submission date, the Basic cost of the Coal was increased by Rs. 10 per MT vide the Notification dated 1 December, 2020.
- iii) The Commission notes that there is increase of Rs. 12.44 per MT in the Basic cost of Coal including the taxes and duties after the submission of the Bid date 10 July, 2019.
- iv) This change in the Basic Cost of Coal was after the submission of the Bid.
- v) As per Case IV Guidelines, any increase in cost of coal, duties and taxes on coal after bid submission date shall be borne by the Buyer during the contract period. Therefore, this is Change in Law and hence the claim for adjustment of additional costs (“Change in Law”) to be borne by MSPGCL is to be passed on to MSEDCL, either through Fuel Adjustment Surcharge bills or as additional claim in truing up process.
- d) Evacuation facility Charges:**
- i) MSPGCL submitted that the Evacuation Facility charges were Rs. 50 per MT as on the bidding date i.e., 10 July, 2019.
- ii) The Evacuation Facility Charges were increased to Rs. 60 per MT vide the Notification dated 1 August, 2021.
- iii) This increase in the Evacuation facility charges were notified after the submission of the Bid.
- iv) The Commission notes that there is increase in cost of Rs. 10.50 per MT on account of Evacuation Facility Charges including the taxes and duties after the submission of the Bid.
- e) Change in Surface Transportation charges:**
- i) MSPGCL submitted that the rate of the Surface Transportation Charges as on the date of Bidding (i.e., 10 July, 2019) was Rs. 100 per MT.

- ii) After the Bid submission date, the rate of the Surface transportation charges was increased to Rs. 115 per MT vide the Notification dated 24 December, 2019. Therefore, there was increase of Rs. 15 per MT in the Surface Transportation charges after the submission of the Bid 10 July, 2019.
- iii) This change in the rate of Surface Transportation charges was after the submission of the Bid.
- iv) The Surface Transportation Charges were again increased by Rs. 4.20/ Ton for (0 to 3 km) and Rs. 26.25/ Ton for (10-20 km) vide the Notification dated 25 December, 2021.
- v) The Commission notes that there was increase of Rs. 4.20/ Ton for (0 to 3 km) and Rs. 26.25/ Ton for (10-20 km) in the Surface transportation charges after first enhancement of the rate.
- vi) As per Case IV Guidelines, any increase in cost of coal, duties and taxes on coal after bid submission date shall be borne by the Buyer during the contract period. Therefore, this is Change in Law and hence the claim for adjustment of additional costs (“Change in Law”) to be borne by MSPGCL is to be passed on to MSEDCL, either through Fuel Adjustment Surcharge bills or as additional claim in truing up process.

31.4 The Events resulting the Change in the price of Coal on account of all the five factors above is as under:

Sr.	Component	Dated	Impact
1	Mine Specific Coal	01.11.2019	Increase of Rs. 450/T for 11 mines. Impact including taxes and duties is Rs. 559.82/T
2	Surface Transportation Cost	24.12.2019	Impact including taxes and duties: <ul style="list-style-type: none"> • Rs. 4.20/T (0-03 km) • Rs. 15.75/T (10 to 20 km)
3	Price of Coal	01.12.2020	Price increased by Rs. 10/T for all grade. Total impact of Rs. 12.44/T including taxes and duties.
4	Evacuation Charges	01.08.2021	Impact including taxes and duties is of Rs. 10.50/T
5	Surface Transportation Cost	25.12.2021	Impact including taxes and duties: <ul style="list-style-type: none"> • Rs. 4.20/T (0-03 km) • Rs. 26.25/T (10 to 20 km)

31.5 MSEDCL has in principle, not objected to the claim of MSPGCL for Change in Law on account of these Notifications or revisions in the charges by Coal India Limited on account of these five factors.

31.6 The Commission notes that all these Notifications are notified after the submission of the Bid date 10 July, 2019.

31.7 The Change in Law Provisions of MYT Regulations, 2019 is reproduced below:

“2.(15) "Change in Law" means occurrence of any of the following events:

- a. enactment, bringing into effect or promulgation of any new Indian law; or*
- b. adoption, amendment, modification, repeal or re-enactment of any existing Indian law; or*
- c. change in interpretation or application of any Indian law by a competent court, Tribunal or Indian Governmental Instrumentality, which is the final authority under law for such interpretation or application; or*
- d. change of any condition or covenant by any competent statutory authority in relation to any consent or clearances or approval or License available or obtained for the Project; or*
- e. any change in taxes or duties, or introduction of any taxes or duties levied by the Central or any State Government.” [emphasis added]*

31.8 The Commission also notes that as per Case IV Bidding Guidelines, issued by MoP, any increase in cost of coal, duties and taxes on coal after the Bid submission date shall be borne by the Buyer during the contract period. The relevant abstract of the Case -IV Guidelines dated 20 February, 2017 issued by MoP is as under:

“8.2

viii Any increase in cost of coal, duties, and taxes on coal shall be borne by the Buyer during the Contract period.”

31.9 The Commission notes that the bids were called vide RfP dated 10 June, 2019 and the last date of submission was 10 July, 2019. It is pertinent to note that after resorting to e-tendering process on National e-Bidding DEEP portal by MSPGCL, it had issued Letter of Award to DIL on 13 September, 2019. Accordingly, the Change in Law events specified above in paragraphs 31.2, 31.3 and 31.4 are after the bid submission date.

31.10 Therefore, the Commission is inclined to accept the submission of MSPGCL that the change in the Cost of coal on account of MSP, basic price of coal cost, evacuation facility charges and the surface transportation charges were after the submission of the Bids by the Bidders. Therefore, the Commission in-principle accepts the Change in Law claim of MSPGCL.

32. Issue (e): Whether the coal quantity and quality under the Contract has been reconciled and is it beneficial to the end consumers of MSEDCL?

32.1 The Commission notes the submission of MSPGCL that reconciliation is carried out considering GCV on ARB basis in line with the proviso 8.2.1 and 5.2.8 (b) of Detailed Procedure Agreement (DPA).

32.2 As per Regulations 50.5 of MYT Regulations 2019, Coal based Generating Station need to calculate Energy Charges considering Gross calorific value of coal “as billed by supplier” less “as received at generating station”, subject to the maximum loss in calorific value of 300 kcal/kg. As per as submission made by MSPGCL in case No. 296 of 2019 and 180 of 2020, GCV considered by CIMFR for determination of Grade of coal for billing at loading end is based on Equilibrated Moisture basis, however equilibrated GCV so arrived by third party sampler is corrected for moisture loss to arrive at GCV at unloading point as per formula as outlined below, which is as per guidelines specified in “Case 4: Flexibility in utilization of coal in IPP stations”,

$$\text{GCV ARB} = \text{GCV Eq} \times (100 - \text{TM}) / (100 - \text{M eq})$$

32.3 The illustration for the calculation is outlined in the following table:

CIMFR Analysis Results on EQ conditions of 60%RH 400C						
GCV EQB	TM %	M %	GCV(ARB) at loading	Diff.	GCV(ARB) at unloading	GRADE at Unloading Site
Kcal/Kg	%	%	Kcal/Kg	Kcal/Kg	Kcal/Kg	
a	b	C	$d = a * ((100 - b) / (100 - c))$	$e = a - d$	f	$g = a - f$
4230	13.30	7.50	3965	265.23	3742	488

32.4 In case No. 296 of 2019, the Commission has observed that for FY 2018-19, the GCV loss between as Billed and As Received was 662 kcal/kg for MSPGCL as a whole, comprising 362 kcal/kg towards Grade Slippage and 300 kcal/kg towards moisture correction and accordingly has provided relaxation for subsequent years with some improvement in GCV. Also, such relaxation was further increased in Case No. 180 of 2020. The Commission has also stated that effect of moisture is around 300 kcal/kg in GCV which is well within permissible range of the MYT Regulations.

32.5 With respect to Case IV, as per the Guidelines, for reconciliation of coal, equilibrated GCV so arrived by third party sampler may be corrected for moisture loss to arrive at GCV at unloading point. Accordingly, in line with the formula as prescribed by MoP in the Guidelines, only moisture loss correction is undertaken on GCV and any further correction of GCV at unloading point has to be borne by the DIL. Also, it is evident from the above table that as the terms as specified in the Tender documents, it does not allow any margin between moisture corrected As-Received GCV at the loading end of coal determined by the third party (CIMFR) and the GCV at unloading end. Hence the GCV correction is only to the extent of moisture correction which can be around 300 kcal/kg and further any variance is borne by DIL other wise to be borne by MSPGCL to

the extent of additional margin provided in Case No. 180 of 2022, resulting in the benefit to the consumers.

- 32.6 Therefore, the methodology adopted in this process is beneficial to the end consumers of MSEDCL.
- 32.7 The Commission also notes from the submissions that after the final reconciliation of the Quantity and quality of coal, if extra coal is available after the contract period, DIL will supply equivalent energy to MSEDCL at the same terms and conditions within 25% of the contracted period. Also, if excess coal is utilized by DIL to supply energy to MSEDCL, there will be no additional cost to the MSPGCL/ MSEDCL on account of the excess coal utilized by DIL since the payment for the extra quantum of coal is already effected.
- 32.8 The Commission further notes that MSPGCL in its Petition has provided the provisional reconciliation for the Period of November, 2019 to March, 2021. From the reconciliation statement for 517 days, it is observed that the actual generation was of 2027.79 MUs.
- 32.9 The Commission analyzed that the contract of DIL was of 185 MW, hence considering the capacity of 185 MW the full generation possible will be 2295.48 MUs. Therefore, the PLF of DIL for the period (November, 2019 to March, 2021) was almost 88%. This PLF is more than the normative PLF and hence beneficial to the end consumers.
33. **Issue (f): If the claims made by MSPGCL qualifies for “Change in Law” then what should be the amount of claim to be allowed?**
- 33.1 The Commission is of the view that the objective of coal tolling arrangement is to optimize the cost of generation and therefore before passing on the Change in Law adjustments for tolling arrangement, it needs to be ensured that the overall costs of power supplied under tolling arrangement is lower than the cost of generation approved by the Commission from MSPGCL stations considered for tolling. This compilation and scrutiny of data has not been carried out by MSPGCL and the provisions of the Grid code stipules scrutiny based on the actual numbers. Hence, it would be appropriate to allow MSPGCL to raise the supplementary bills for Change In Law only after submission of all the details by MSPGCL (including the detail calculations), verification by MSEDCL and thereafter prudence check by the Commission.
- 33.2 MSEDCL in its submission has stated that the intention of coal tolling arrangement under Case IV bidding is to optimize utilisation of coal. MSEDCL stated that it is necessary for MSPGCL to substantiate the operational efficiency of the Power Station selected under Case IV bidding as compared to its existing Power Stations which was replaced and to demonstrate the savings in cost of generation. Merely showing the savings in per unit cost of generation does not showcase the correct benefit derived from the coal tolling arrangement. Therefore, separate assessment may be done for the benefit derived due to

operational efficiency / parameters of DIL as compared to Nashik TPS excluding the cost of fuel which is a pass through in any case.

- 33.3 Accordingly, the Commission has analyzed the details provided by the MSPGCL and analyzed the impact on tariff for power supplied under coal tolling arrangement.
- 33.4 The Commission notes that as per the Tariff Order dated 22 September 2018 in Case No. 196 of 2017, the approved energy charges for Nashik TPS was Rs. 3.436 /kWh against which the quoted Tariff of DIL was Rs. 2.889 /kWh resulting in a savings of Rs. 0.547/ kWh.
- 33.5 The impact of Change in Law on the total contract value of Case -IV Phase II which calculated on a monthly basis as well as for the total contract period is as under:

Month	Energy Schedule by DIL	Tariff offered by DIL	Total Invoice Value	Impact of CIL (include MSP, Evacuation Charges STC and revision in Cost)		
	Mus	Rs/ kWh	Rs. Crores	Rs. Crores	%	Rs. / kWh
1	2	3	4	5	6	7
Nov 19	112.42	2.889	32.48	1.32	4%	0.117
Dec 19	111.05	2.889	32.08	0.56	2%	0.050
Jan 20	118.28	2.889	34.17	0.61	2%	0.051
Feb 20	125.00	2.889	36.11	1.48	4%	0.118
Mar 20	125.91	2.889	36.37	1.52	4%	0.121
Apr 20	128.17	2.889	37.03	1.78	5%	0.139
May 20	134.46	2.889	38.84	0.68	2%	0.050
Jun 20	122.00	2.860	34.89	0.72	2%	0.059
Jul 20	118.85	2.781	33.06	0.60	2%	0.051
Aug 20	119.21	2.711	32.32	0.35	1%	0.029
Sep 20	112.84	2.790	31.48	1.36	4%	0.120
Oct 20	113.92	2.853	32.51	2.26	7%	0.198
Nov 20	116.46	2.889	33.65	1.52	5%	0.130
Dec 20	124.79	2.889	36.05	1.89	5%	0.151
Jan 21	120.62	2.889	34.85	0.71	2%	0.058
Feb 21	99.45	2.889	28.73	0.35	1%	0.035
Mar 21	124.37	2.889	35.93	2.23	6%	0.180
Apr 21	127.33	2.889	36.78	2.65	7%	0.208
May 21	122.77	2.889	35.47	3.73	11%	0.304
Jun 21	110.04	2.701	29.71	1.34	4%	0.121
Jul 21	121.95	2.574	31.39	4.98	16%	0.408
Aug 21	74.88	2.750	20.59	3.33	16%	0.445
Sep 21	105.65	2.804	29.63	4.18	14%	0.396
Oct 21	103.86	2.889	30.01	5.44	18%	0.523
Nov 21	116.90	2.842	33.22	5.16	16%	0.442
Dec 21	105.38	2.817	29.69	5.04	17%	0.479
Jan 22	120.19	2.884	34.66	5.26	15%	0.438
Feb 22	108.27	2.889	31.28	4.50	14%	0.416
Mar 22	111.48	2.889	32.21	4.20	13%	0.376

Total	3356.49	2.846	955.21	69.74	7%	0.208
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33.6 Even considering the Change in Law causing additional impact of Rs. 0.21 /kWh as outlined in the table above, the net saving is of Rs. 0.337/ kWh as compared to the approved ECR for Nashik TPS in the Tariff Order.

33.7 The Commission notes that the Energy Charge Rate (ECR) considered in FAC for the contract period with DIL quoted Tariff with and without Change in Law impact is as under:

Month	Tariff offered by DIL	Impact of CIL	Tariff offered by DIL considering CIL	FAC rate of Nashik TPS considered for MoD	Difference
	Rs. / kWh	Rs. / kWh	Rs. /kWh	Rs. / kWh	Rs. / kWh
1	2	3	4	5	5
Nov 19	2.889	0.117	3.006	3.444	-0.44
Dec 19	2.889	0.050	2.939	3.702	-0.76
Jan 20	2.889	0.051	2.940	3.756	-0.82
Feb 20	2.889	0.118	3.007	4.150	-1.14
Mar 20	2.889	0.121	3.010	4.378	-1.37
Apr 20	2.889	0.139	3.028	4.121	-1.09
May 20	2.889	0.050	2.939	3.933	-0.99
Jun 20	2.860	0.059	2.919	3.950	-1.03
Jul 20	2.781	0.051	2.832	3.592	-0.76
Aug 20	2.711	0.029	2.741	3.601	-0.86
Sep 20	2.790	0.120	2.910	3.607	-0.70
Oct 20	2.853	0.198	3.051	3.607	-0.56
Nov 20	2.889	0.130	3.019	3.774	-0.75
Dec 20	2.889	0.151	3.040	3.627	-0.59
Jan 21	2.889	0.058	2.947	3.379	-0.43
Feb 21	2.889	0.035	2.924	3.435	-0.51
Mar 21	2.889	0.180	3.069	3.463	-0.39
Apr 21	2.889	0.208	3.097	3.350	-0.25
May 21	2.889	0.304	3.193	3.551	-0.36
Jun 21	2.701	0.121	2.822	3.623	-0.80
Jul 21	2.574	0.408	2.982	3.663	-0.68
Aug 21	2.750	0.445	3.195	3.697	-0.50
Sep 21	2.804	0.396	3.200	3.752	-0.55
Oct 21	2.889	0.523	3.412	3.761	-0.35
Nov 21	2.842	0.442	3.284	3.791	-0.51
Dec 21	2.817	0.479	3.296	3.819	-0.52
Jan 22	2.884	0.438	3.322	3.861	-0.54
Feb 22	2.889	0.416	3.305	3.901	-0.60
Mar 22	2.889	0.376	3.275	4.023	-0.76
Total	2.846	0.208	3.054	3.739	-0.69

- 33.8 The Commission notes from the above table that even in the case the impact of Change in Law is considered on the power scheduled and despatched by DIL under Case IV Phase – II against Nashik TPS, there has still been a saving of around Rs. 0.69 /kWh for overall contract period. It is observed that on a monthly basis, the saving is in the range of Rs. 0.25/ kWh to Rs. 1.37/ kWh for the energy scheduled from DIL under Case -IV Phase -II.
- 33.9 Even after considering the impact of Change in Law, the Case -IV Phase – II contract with DIL has resulted into saving of Rs. 0.69/ kWh on an average resulting into lower burden on the consumers of MSEDCL.
- 33.10 The Commission notes that the above saving is on account to savings in the variable cost of coal. MSEDCL has raised the point regarding the issue of savings on account of operational efficiency. MSPGCL and DIL has not submitted any details regarding the operational efficiency and the comparison of the same. The Commission during prudence check will be verifying the operational performance separately and the same is not expected to be subsumed in the advantages gained due to lower variable charge.
- 33.11 The Commission notes the submission of MSPGCL where in it is submitted that the contract of DIL is completed by 31st March 2022, and hence MSPGCL submitted the details till 31 March 2022 in its additional submission dated 8 June, 2022. Accordingly, MSPGCL revised its earlier claim in the original Petition by submitting the additional details for the period from 1 June, 2021 to 31 March, 2022.
- 33.12 The Commission notes the details of the computation provided by MSPGCL considering all Change in Law events. It is observed that the computations are based on the coal quantity supplied to DIL under the coal tolling arrangement. The final reconciliation on the basis of the (quantity and quality) is yet to be done.
- 33.13 Therefore, the actual impact of change in price of coal is Rs. 69.74 Crores based on the reconciliation of coal supplied under Case IV Phase II. The Claim of DIL is of Rs. 68.32 Crores, the additional Rs. 1.64 Crores on account of Coal Price Revision is borne by MSPGCL from the reconciliation statement and hence total Change in Law claim to be recovered from MSEDCL is of Rs. 69.74 Crores.
- 33.14 The Commission further notes that even though the contract has been completed on 31 March, 2022 the final reconciliation has not yet done. On analysis of the data, it is observed that the computations of the Change in law Claims are based on the coal quantity received under the coal tolling arrangement to DIL during November, 2019 to March, 2022. Therefore, in absence of the reconciliation the MSPGCL's Claim of Rs. 69.74 Crores becomes is provisional. The Commission directs MSPGCL to submit all reconciliation details during the upcoming MTR Petition. Accordingly, the Commission allows the total claim of Rs 69.74 Crores provisionally due to impact of change in prices of coal due to multiple events occurring during the contract period as outlined in the following table:

Table: Total impact to be allowed to pass through in FAC:

Sr.	Particulars	02.11.2019 to 31.12.2020	01.01.2021 to 31.05.2021	01.06.2021 to 31.03.2022	Total
1	Impact due to Mine Specific	15.19	8.61	40.37	64.17
2	Impact due to Surface Transportation Cost	1.32	0.51	1.41	3.24
3	Impact due to Evacuation Charges	-	-	0.68	0.68
4	Impact due to Revision in Coal Prices	0.12	0.55	0.97	1.64
5	Total CIL Claim (1+4)	16.63	9.67	43.44	69.74

33.15 The Commission notes that the actual impact of the Change in law is less than Rs. 0.21/kWh. The effective variable charge of DIL was Rs. 3.054/kWh as against the variable charge of Rs. 3.739/ kWh for Nashik TPS.

33.16 Therefore, the Commission allows MSPGCL's claim of Rs. 69.74 Crores provisionally as Change in Law as per sub-clause 'e' of "Change in Law" definition under MYT Regulations, 2019, subject to prudence check as observed under the specific issues above and subject to prudence check by the Commission in the MTR proceedings.

34. Issue (g): What are the modalities for carrying cost:

34.1 It is well settled principle that compensation on account of Change in Law provisions has to be granted along with carrying cost so as to restore the affected party to same economic position as if such Change in Law event has not occurred.

34.2 The Commission notes that DIL has claimed carrying cost at the rate of 1.25% per month in terms of Clause 10.4.2 and 10.5.2 of the DPA dated 18 October, 2019.

34.3 The Commission notes the submission of MSPGCL that the clause 10.4.2 refers to payment of interest in case of any amount which is payable upon adjudication of dispute. Further, the clause 10.5.2 in in respect of late payment surcharge is in view of non-payment by MSPGCL. There is no delay whatsoever from MSPGCL in making any payment nor has DIL has raised any such demand for late payment surcharge, and it has for the first made claim of carrying cost by relying on certain clauses of DPA as mentioned herein above which nowhere specify the levy of carrying cost as claimed by DIL.

34.4 The Commission finds that in its earlier Order dated 31 December 2021 in Case No.25 of 2020 (TPREL vs MSEDCL- Implementation of the Appellate Tribunal for Electricity (ATE)'s Judgment dated 20 September 2021 in Appeal No. 215 of 2021), it has provided the carrying cost.

- 34.5 The Commission notes that there is no provision of the carrying cost in the DPA. The rate of LPS as sought by DIL which is 1.5% per month is a penal charge for the delayed payment of the Invoices and thus cannot be considered for carrying cost.
- 34.6 The MYT Regulations on the requirement of the working capital has specified that the rate of interest on working capital shall be on normative basis and shall be equal to the one year Marginal Cost of funds based Lending Rate (MCLR) declared by SBI from time to time plus 150 basis points.
- 34.7 In absence of any specific provision in the DPA, the Commission is inclined to rely on the provisions of the MYT Regulations, 2019.
- 34.8 The Commission also notes that there were five events of the Change in Law as under:
- a) Mine Specific Coal Charges (w.e.f. 01.11.2019),
 - b) Surface Transportation Charges (w.e.f. 24.12.2019),
 - c) Change in Basic price of coal (w.e.f. 1.12.2020)
 - d) Evacuation facility charges (w.e.f.01.08.2021),
 - e) Change in Surface Transportation Charges (w.e.f. 25.12.2021).
- 34.9 It is pertinent to note that first two events (1 November, 2019 & 24 December, 2019) were prior to Notification of the Grid Code Regulations, 2020 which were notified on 2 September, 2020. Therefore, these two events are out of the ambit of the Grid Code Regulations, 2020.
- 34.10 The third event of the Change in Basic price of the Coal has occurred on 1 December, 2020. However, the Petition was filed by MSPGCL on 17 September, 2021 after a delay of almost nine months. Even if the claim of Change in Law is allowed on account of the condonation of delay on account of the Order dated 23 March, 2020 passed by Hon'ble the Supreme Court, the Commission is of the view that passing the carrying cost for these nine months to consumers is not justified. The same will be dealt accordingly in the MTR proceedings.
- 34.11 Regarding fourth Change in Law Events (dated 1 August, 2021) the Commission notes that there is delay of 17 days. The reasons and the decision stated at para 34.10 will be applicable in this case also.
- 34.12 The Commission notes that the fifth Event of the Change in Law claim (25 December, 2021) occurred after filing this Petition on 17 September, 2021.
- 34.13 Accordingly, the Commission allows claim of carrying cost at the rate of one year Marginal Cost of funds based Lending Rate (MCLR) declared by SBI from time to time plus 150 basis points on above compensation amount from the date of actual payment till date of this Order excluding the carrying cost for two events for periods as specified in paragraph 34.10 & 34.11 above.

35. Issue (h): What would be the recovery mechanism for the amount allowed as a pass through?

- 35.1 The Commission notes that MSPGCL has requested to allow it to recover the amount of “Change in Law” claims, under Case-IV Phase-II coal tolling from MSEDCL through FAC mechanism.
- 35.2 MSPGCL cited the MoP’s Electricity (Timely Recovery of Costs due to Change in Law) Rules on 22 October, 2021 seeking the pass through of the Change in Law claims in FAC mechanism.
- 35.3 The provisional amount of Rs. 69.74 crore is for the period from 2 November, 2019 to 31 March, 2022 (i.e., some part of FY 2019-20 & FY 20-21 & FY 2021-22. It is pertinent to note that these claims shall have been submitted immediately to the Commission to ensure the timely recovery through the FAC mechanism. MSPGCL has not only delayed the submissions of the claims, but has still not finally reconciled the same. MSPGCL will require a separate filing post final reconciliation to enable the Commission carry out prudence check. The submissions shall be made in the upcoming MTR proceedings.
- 35.4 As per the MoP notification, the Change in Law claims shall be passed on immediately through the Fuel Adjustment Mechanism to reduce the burden of carrying cost and to ensure the financial viability of the claimant. It is pertinent to note that FAC mechanism works on the payment on the invoice basis. In this Case apparently no invoices are raised on MSEDCL yet. The Commission notes that there is already lapse of almost 2 and half year from the first occurrence of the Change in Law event for which MSPGCL has filed the Petition in Case No. 128 of 2021.
- 35.5 The Commission also notes that recently the Commission has issued the FAC approval to MSEDCL on 1 July, 2022 for the recovery for the months of July, 2022 to October, 2022 in spread out manner on account of hitting the Ceiling limit of 20% of the variable cost.
- 35.6 The relevant abstract of the FAC Approval of MSEDCL dated 1 July, 2022 is as under:
- “ 1.4 Accordingly, considering the approved FAC amount of Rs. 929.80 Crore for the month of May, 2022 and same after being added to the FAC fund of 6834.38 Crore, the total balance amount to be recovered is Rs. 7764.18 Crore. The Commission in its letter dated 5 April, 2022 has indicated recovery of FAC amount in three months. The recovery of FAC amount in three months will hit the ceiling limit of 20% and there would be recovery of Rs 3941.43 Crore and unrecovered amount would still be Rs 3823.05 Crore. With such unrecovered amount, there would be ceiling limit applicable for further two months. Considering the fact that ceiling limit will be applicable for next five months, the said FAC amount of Rs 7764.18 Crore is being allowed to be recovered equally in five*

*months from July, 2022 to November, 2022. The amount allowed to be recovered for each month along with carrying cost is Rs 1586.18 Crore. However, the said recovery exceeds the 20% ceiling of variable component of tariff as specified in the MYT Regulations. Accordingly, the Commission has allowed recovery of Rs 1307.55 Crore considering the ceiling at 20% of the variable component of tariff. The Commission has allowed the equal recovery so as to avoid tariff variation every month to the Consumers. The total estimated recovery for five months considering the ceiling is Rs 6537.77 Crore. **The balance amount of Rs 1226.42 Crore is carried forward and will be considered for recovery from December 2022 onwards.***

- 35.7 As can be seen that even if the recovery allowed immediately, it would not materialise on account of the ceiling of 20%. The Commission also notes that the time for upcoming MTR Petition filing is also nearing (November, 2022). Therefore, the Commission deems it fit to allow this amount as Change in Law and directs that the recovery of such expense to be included in its ARR during the upcoming Mid Term Review (MTR) Petition including the submission of the final reconciliation.
- 35.8 Accordingly, MSPGCL may reconcile the provisional amount of Rs. 69.74 crore along with the carrying cost (as approved in paragraph 34) in its MTR Petition.
- 35.9 The Commission, therefore, allows the amount of Rs. 69.74 crore (provisional subject to reconciliation in the MTR proceedings) as a Change in Law claim to MSPGCL for DIL Case IV Phase -II coal tolling arrangement.
- 35.10 Regarding the Case No. 48 of 2022, DIL itself in has agreed that after the submission of MSPGCL dated 8 June, 2022 all the issues are covered in case No. 128 of 201 except the issue of carrying cost. Since the Commission has dealt the issue of carrying cost, nothing left in Case No. 48 of 2022 and hence need to be disposed of.

36. Hence, the following Order:

ORDER

- 1. The Case No. 128 of 2021 is partly allowed.**
- 2. The Case no. 48 of 2022 is disposed of in terms of the reliefs granted in para-No. 34 of the Order.**
- 3. The Commission provisionally allows the amount of Rs. 69.74 crore as a Change in Law claim to MSPGCL from MSEDCL in Case IV Phase -II coal tolling arrangement subject to prudence check during the upcoming MTR proceedings.**
- 4. The Commission allows the claim of DIL for carrying cost (as approved in Para 34).**

5. MSPGCL shall submit the final reconciled data pertaining to this claim in its upcoming MTR Petition.

Sd/
(Mukesh Khullar)
Member

Sd/
(I. M. Bohari)
Member

Sd/
(Sanjay Kumar)
Chairperson

